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## Raise the Age? Children's attitudes towards the minimum age of criminal responsibility

Siobhan McAlister, Nicola Carr, Clare Dwyer and Katrina Lloyd

### Introduction

The minimum age of criminal responsibility (MACR) is the age at which a child who commits an offence is considered to have attained the emotional, intellectual and mental maturity to understand their actions, can be formally charged and held responsible in a criminal procedure. Northern Ireland (along with England & Wales) has one of the lowest ages of criminal responsibility in Europe, with children being held responsible for their actions from the age of ten. This is out of line with other age markers, including the age of sexual consent (16), the age at which it is legal to drive a car (17) and the age at which a person is entitled to vote (18). At 10 the MACR in Northern Ireland is below the minimum recommended by the UN Committee on the Rights of the Child, which considers that any limit below the age of 12 is not acceptable. The Committee has recommended an increase in the minimum age of criminal responsibility in each of its Concluding Observations on the UK's compliance, in 1995, 2002, 2008 and 2016.

In 2010, the Hillsborough Agreement which set out the timetable for the devolution of Justice and Policing powers to the local assembly in Northern Ireland gave a commitment to undertake a review of the youth justice system to 'ensure compliance with international obligations and best practice' (Hillsborough Castle Agreement 2010). The subsequent Youth Justice Review (2011) made 31 recommendations for change, including that the MACR 'be raised to 12 with immediate effect, and that following a period of review of no more than three years, consideration should be given to raising the age to 14' (Recommendation 29, Youth Justice Review). Following the Youth Justice Review the then Minister of Justice David Ford gave his commitment

to progress the issue; however, to date this has not occurred with a lack of public support being cited as the reason.

Despite assertions about a lack of public support, there is no research on public attitudes towards the age of criminal responsibility, including those of children (see Watkins et al., 2016 for research with children in England). It is particularly important to ascertain children's views on this issue as they have the right to express their views on all matters affecting them (Article 12, UNCRC). The views of those affected by the MACR should, therefore, inform political debate and decision-making.

In order to add children's voices to the debate, 5094 Primary 7 (P7) children (aged 10-11) across Northern Ireland answered a series of questions in the 2016 Kids' Life and Times (KLT) survey. These aimed to collect their views on the age of criminal responsibility and their understanding of what constitutes criminal behaviour. This is the first time the views of the age group who have reached the age of criminal responsibility have been collected in Northern Ireland. To aid understanding, a definition of criminal responsibility was provided:

In England, Wales and Northern Ireland, the law says that anyone 10 years old or older can be held criminally responsible. This means that they understand that they are committing a crime (have broken the law), they are old enough to go to court and they can be punished (for example, by not being allowed to go to certain areas; by having to do work in their community; by having to attend special classes or meetings; or they can be sent to prison).

### Children's Understanding of the Minimum Age of Criminal Responsibility

A range of questions were posed to establish children's understanding and views of the MACR. The first question asked whether children who are 10 years old understand if they have broken the law. Just over half of the KLT respondents either disagreed (27.1%) or said that they did not know (23.9%) if children who are 10 years old understand if they have broken the law. However, a substantial minority (48.6%) agreed with the statement that 10

Table 1: Scenarios asking children if the following constitute law-breaking

	Yes	No	Don't know
Steals a bar of chocolate from a shop?	67.2%	18.1%	14.4%
Breaks a neighbour's window with a brick?	78.8%	9.8%	11.0%
Throws stones at the police?	78.7%	9.0%	11.8%
Punches someone?	23.9%	55.7%	19.9%

year olds understand if they have broken the law. The divergent responses indicate that there is substantial variation in P7 children's views as to whether children of their age have an understanding of the concept of law breaking at age 10.

A further series of questions were set to gauge children's views on whether specific behaviours would be considered criminal offences. We asked whether in the scenarios shown in **Table 1**, in which the behaviour was engaged in deliberately, they considered that John, aged 10, would have committed a crime and broken the law.

These questions were intended to gauge whether children based their assessment of whether something was a criminal offence, on the seriousness of each scenario. The first scenario involves minor theft, while the last involves an assault. The majority of children considered the first three scenarios (theft, criminal damage and throwing stones at the police) to be offences but less than a quarter of children considered 'punching someone' to be an offence. It is particularly striking that the behaviour that could be characterised as the most serious under criminal law, (assault on an individual), is not considered a crime by the majority of children. Together these responses show inconsistencies in children's level of understanding of law breaking.

While children showed uncertainty as to whether 10 year olds understood the concept of law-breaking, they were much

clearer in their view that children aged 10 should not face formal processing through the criminal justice system. Over two-thirds of respondents (69%) stated that children aged 10 were not old enough to be arrested or go to court. However, within these responses there is some evidence of divergence based on gender. Boys were more likely to agree that 10 year olds understand that they have broken the law, while girls were more likely to agree that 10 year olds should not be arrested or go to court.

### **Children's Views on Responding to Law Breaking**

Children's preference for non-formal/non-criminal justice interventions in instances of law breaking was further exemplified in their responses to a range of scenarios. In considering a fictional event in which 'Rob', aged 10 in one scenario, and 14 in another, broke a neighbour's window as part of a dare, the most frequently chosen response in both instances was to tell the child's parents (see **Table 2**). Less than a quarter of children felt the police should be called if the child was aged 10 (23%), with this rising to 65% when the child was 14. The second most frequently chosen response when the child was 10 was also one of minimal intervention - asking the child to apologise. This suggests that children feel age is important when considering how to respond, and that criminal justice intervention need not always be the primary response. The younger the child in the scenario proposed, the less formal

the interventions suggested.

With regards to the open-ended category of 'something else', similar themes were evident in both scenarios but appeared with differing degrees of frequency. The most frequently suggested response in both scenarios was again non-formal, but demonstrated an understanding of wrong-doing and the need to make amends. A range of reparative measures from paying for the damage (themselves or their parents), to making amends through doing 'chores' or jobs for the neighbour was suggested. The following is illustrative:

'Have him to clean it up and work hard and clean the neighbour's house until he earns the money to fix it'.

Interestingly a large number of responses also noted the importance of talking to the child, to find out the reason for their actions and/or to confirm their guilt. A significant number drew attention to the potential influence of peer pressure or bullying – 'Ask Rob why he did it because they might find out he was made do it'. These free responses imply that children believe that context is important when considering behaviours, and thus responses to them. This is exemplified in the following statements:

'Find out why he did it because he could have a good reason because something [could] have happened and you don't know what's been going [in] his life'.

'Get Rob to sit with her/ him so he can tell her/ him the reason he did it. ... if the neighbour does that the police should not be called as it was a mistake and windows can be fixed'.

Like in the pre-defined response categories, the children's free responses also suggested differing actions in accordance with the child's age. For example, a higher proportion suggested telling the 10 year old 'not to do it again' or forgiving them, than suggested this for the 14 year old. In relation to how they felt behaviour should be responded to,

**Table 2: Responses to criminal damage when 'Rob' is aged 14 and 10 years**

	'Rob' aged 14 years %	'Rob' aged 10 %
Tell the child's parents	72	84
Call the police	65	23
Ask child to apologise	34	46
Tell the school	14	15
Something else	8	6*

\*Multiple responses could be chosen

therefore, age was clearly an important factor for KLT respondents, and so too was circumstance and context for some.

### Children's Attitudes on the Minimum Age of Criminal Responsibility

In order to ascertain whether children agree with the current age of criminal responsibility, a series of questions were included which asked whether they think there should be an older age of criminal responsibility in Northern Ireland, and what age they think this should be. Over half of the sample (59%) felt the MACR in Northern Ireland should be raised. There were slight differences in responses by gender, with 60% of girls noting that there should be an older age of criminal responsibility compared to 57% of boys. Just one-quarter of the sample (25%) agreed that the MACR should remain the same as it currently is, with boys more likely to feel that the MACR should not be raised (29% compared to 21% of girls).

When asked what age they felt the MACR

should be in Northern Ireland, only 20% of children stated that it should be 10 years old (**Table 3**). Therefore, the vast majority of the sample (80%) felt the MACR should be set higher than it currently is. Almost half of the respondents were in favour of setting the MACR at 14 or 16 years of age (48%). An additional 16% felt that the age of criminal responsibility in Northern Ireland should be set at 18 years old. Girls were marginally more likely to feel that the MACR should be set at a higher age than boys. This is a noteworthy finding considering that the average age in European jurisdictions is set at 14 years, with the majority of countries within the European Union, setting the minimum age at 14 or 15 years (Howard League for Penal Reform).

The majority of children in favour of raising the age (80%) gave the simple reason that '10 is just too young'. One respondent also expressed:

'I think the age of criminal responsibility should be higher than ten because not all ten

year olds are mature enough to understand that their actions could somewhat hurt others or themselves...'

### Conclusion

The low age of criminal responsibility in Northern Ireland is out of line with international rights standards and European comparators. It is also at variance with other age markers set out in law, including the age of sexual consent.

The findings from this first survey on the MACR conducted with children in Northern Ireland, who under law would meet the threshold of criminal responsibility, show that there are clear inconsistencies in their understanding of what constitutes criminal behaviour. The majority of children of this age favoured less formal responses to behaviour that may be considered law-breaking and supported raising the age of criminal responsibility.

**Table 3: What do you think the age of criminal responsibility should be in Northern Ireland?**

Age of criminal responsibility should be....	Boys %	Girls %	All %
10 years	23	16	20
12 years	17	16	16
14 years	23	25	24
16 years	23	26	24
18 years	14	17	16
	100	100	100

## References

Howard League for Penal Reform (2008) 'Punishing Children: a survey of criminal responsibility and approaches across Europe'.

Watkins, D., Lai-Chong Law, E., Barwick, J. and Kirk, E. (2016) "'If you are 10, you go to prison": Children's understanding of the age of criminal responsibility', *Northern Ireland Legal Quarterly* 67 (3): 311-326

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Kids' Life and Times is an annual online survey of P7 children in Northern Ireland carried out in school. In 2016, 5094 children participated in the survey.

The Kids' Life and Times survey is a joint initiative between Queen's University Belfast and Ulster University, and provides an independent source of information on what children think about the social issues of the day. Check the web site for more information on the survey findings ([www.ark.ac.uk/klt](http://www.ark.ac.uk/klt)) or call Katrina Lloyd on 028 9097 5962 with any queries.

## Key points

- From age 10, children in Northern Ireland can be held criminally responsible and charged with committing offences. These research findings indicate that there are clear inconsistencies in children of this age's level of understanding of law-breaking.
- Over two-thirds of respondents stated that children aged 10 were not old enough to be arrested or go to court.
- There is some evidence of variation in responses by gender. Generally, girls were less likely to agree that 10 year olds understand the concept of law-breaking and that 10 year olds should face the prospect of arrest or court.
- Age is an important factor in children's considerations of how behaviour should be responded to. Non-criminal justice interventions are prioritised for younger children.
- A significant majority of respondents, 80% felt the MACR should be set higher than 10 years old.
- Nearly half of all respondents (48%) felt that the MACR should be set between the ages of 14 and 16 years.
- The views of children should be taken into account in all matters affecting them. Given the significance of the MACR, and the potential impact on children's lives, the views expressed here (and elsewhere) should inform political debate and decision-making on this issue.

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